

## CHAPTER 40

# DOD HIV/AIDS POLICY AND THE LAW

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## Outline of Instruction

### **I. INTRODUCTION.**

### **II. REFERENCES.**

- A. DoD Directive 6485.1, Human Immunodeficiency Virus-1 (HIV-1), 19 March 1991.
- B. Army Regulation 600-110, Identification, Surveillance, and Administration of Personnel Infected with Human Immunodeficiency Virus (HIV) (22 April 1994).
- C. Air Force Instruction 48-135, Human Immunodeficiency Virus Program (1 August 2000).
- D. SECNAV Instruction 5300.30C, Management Of Human Immunodeficiency Virus-1 (Hiv-1) Infection In The Navy And Marine Corps (14 March 90); 12792.4, Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome in the Department of the Navy Civilian Workforce (12 January 1989).
- E. Centers for Disease Control and Prevention. HIV/AIDS Surveillance Report, 1997; Vol. 9, No.1. (Copies of the HIV/AIDS Surveillance Report are available free from the CDC National AIDS Clearinghouse, P.O. Box 6003, Rockville, MD 20849-6003; telephone 1-800-458-5231 or 1-301-519-0023.)

### **III. THE DISEASE.**

- A. In General.
- B. Disease Progression.
- C. Detection.
- D. Transmission.

- E. Classifications. DODD 6485.1, E2.2; AR 600-110, para. 2-1b. See also Appendix A, this outline.

#### **IV. DOD AND SERVICE POLICIES.**

- A. Accession Testing. HIV positive personnel are not eligible for enlistment or appointment in the military, both Active and Reserve Component. DODD 6485.1, para. 4.1; AR 600-110, para. 1-14a.
1. HIV screening for enlisted applicants is conducted at Military Entrance Processing Stations (MEPS). DODD 6485.1, para. 4.2; AR 600-110, para. 3-3b.
  2. Officer applicants are screened during pre-contracting, pre-scholarship, or pre-appointment physical examinations. DODD 6485.1, E5; AR 600-110, para. 3-3h.
    - a. U.S. Military Academy cadets, midshipmen and persons attending the Uniformed Services University of Health Sciences are separated and discharged with an honorable discharge if HIV positivity is the sole basis for discharge. The Superintendent may delay separation until the end of the current academic year or allow graduation in final year. DODD 6485.1, para. E5.1.3; AR 600-110, para. 3-3h(1).
    - b. ROTC cadets are disenrolled at the end of the academic term in which the HIV infection is confirmed. No recoupment action is initiated. DODD 6485.1, para. E5.1.2; AR 600-110, para. 3-3h(2).
    - c. OCS candidates who are in their initial entry training are disenrolled from the program and discharged with an honorable or entry level separation, as appropriate. DODD 6485.1, para. E5.1.1; AR 600-110, para. 3-3h(3).
    - d. OCS candidates who have completed entry level training are disenrolled, reassigned in their original enlisted specialty and administered in accordance with Service regulations for enlisted personnel. DODD 6485.1, para. E5.1.1 AR 600-110, para. 3-3h(3).
    - e. No waiver for HIV infection is authorized.

- f. All personnel disenrolled from officer programs who are separated shall be given preventive medicine counseling and advised to seek civilian treatment.
- 3. Prior service personnel required to meet accession medical fitness standards must have a negative HIV test no more than 6 months before enlistment in the Selected Reserves. Active duty soldiers transferring to or enlisting in the Selected Reserves without a break in service must have a negative HIV test within the preceding 24 months. AR 600-110, para. 3-3g.

B. Disease Surveillance.

- 1. DOD Policy (DODD 6485.1, para. E6.2) requires periodic testing with the following priority for military personnel:
  - a. Deployed or deploying to high HIV risk area,
  - b. Permanent assignment overseas,
  - c. Temporary deployment overseas,
  - d. Specific categories (medical personnel, drug and alcohol rehab, prenatal patients) per service regulation, and,
  - e. All remaining personnel per service regulation.
- 2. Army. Active duty and Reserve Component soldiers are periodically screened for evidence of HIV infection.
  - a. All active duty soldiers are tested routinely at least biennially. AR 600-110, paras. 2-2h and 2-7. Testing is keyed to birth month screening. AR 600-110, para. 2-7b.
  - b. Active duty and Reserve Component soldiers who PCS to overseas (defined as outside the 50 states, Puerto Rico, and the District of Columbia) must have a negative HIV test within the 6 months prior to their portcall. AR 600-110, paras. 2-2k and 2-7e.

- c. Active duty soldiers who are scheduled for overseas TDY or deployment that will not exceed 179 days must have a negative HIV test within the 24 months prior to the departure date. AR 600-110, para. 2-2k(1).
  - d. Active duty personnel scheduled for overseas TDY or deployment exceeding 179 days must have a negative HIV test within the 6 months prior to departure date. AR 600-110, para. 2-2k(2).
  - e. Reserve Component soldiers are tested every 5 years. Reserve Component soldiers may also receive testing during their periodic physicals. AR 600-110, paras. 2-2i and 2-8.
  - f. Reserve Component personnel scheduled for overseas duty:  
Less than 30 days - 24 months prior to departure date.  
Greater than 30 days - 6 months prior to their reporting date.  
AR 600-110, para. 2-2k(3).
3. Navy. SECNAVINST 5300.30C, para. 5
- a. Assigned to a deployable unit or stationed overseas (including Reserves) - annual testing.
  - b. PCS Orders – within 12 months prior to report date.
  - c. Treated for STD, drug/alcohol abuse, or pregnancy.
  - d. All others, during routine physical.
4. Air Force. AFI 48-135, para. 3.2.
- a. Every 5 years during physical exam (flight physical every 3 years).
  - b. Prior to overseas assignment.
  - c. Treatment for pregnancy, STD, or drug/alcohol abuse.

5. Family members and other health care beneficiaries are not required to have an HIV test. However, DA policy is to routinely inform patients that physicians will order any necessary clinically indicated tests, to include HIV, unless the patient specifically declines such tests. DODD 6485.1, para. E6.2.5. Generally, HIV testing is “clinically indicated” under the circumstances listed below:
  - a. All blood donors;
  - b. All patients with suspicious illnesses;
  - c. All persons admitted to Army hospitals unless tested during the proceeding twelve months;
  - d. All persons seen at sexually transmitted disease clinics;
  - e. Certain blood recipients;
  - f. Sexual partners of HIV-infected individuals;
  - g. All pregnant women at the time of their initial prenatal evaluation and at time of delivery, if the mother is identified as being at high risk;
  - h. All persons enrolled in alcohol and drug rehabilitation programs (Tracks II or III);
  - i. Adults undergoing physical examinations;
  - j. All persons presenting at emergency rooms with evidence of trauma, such as shootings, stabbings, IV drug use, and rape;
  - k. All persons with acute or chronic hepatitis B infection; and
  - l. All persons who are dead on arrival or who die in emergency rooms.

6. DOD Civilians.

- a. Civilian employees and applicants for employment may not be mandatorily tested for HIV except to comply with valid host nation laws. DODD 6485.1, para. 6.10.
- b. HIV-positive civilian employees are treated no differently than other employees. They are permitted to work as long as their performance is acceptable and they do not pose a significant safety or health threat to themselves or others. They are considered handicapped employees within the meaning of the Rehabilitation Act of 1973 and are entitled to a reasonable accommodation if otherwise qualified. AR 600-110, paras. 1-14k, l, and m.

C. Health Education. DODD 6485.1, para. E6.3.

- 1. Upon identification, military health authorities will counsel the individual and others at risk regarding:
  - a. Significance of a positive antibody test;
  - b. Mode of transmission of the virus;
  - c. Appropriate precautions, personal hygiene, and measures required to minimize transmission;
  - d. Need to advise any past and future sexual partners of their infection;
  - e. That they are ineligible to donate blood, organs, or semen;
  - f. To always use condoms (except with a spouse who is fully informed of the soldier's condition).
  - g. Counseling is recorded on DA Form 5669-R. Commanders will receive a copy of this form. AR 600-110, para. 2-14d.
  - h. Soldiers who violate the preventative medicine counseling are subject to administrative separation. AR 600-110, paras. 4-12e and 4-13c.



2. The medical assessment of each exposure to or case of HIV infection includes an epidemiological assessment (EPI) of the potential transmission of HIV to other persons. AR 600-110, para. 7-3.
3. Commander's Counseling. Unlike the Air Force and Navy, the Army specifically provides for Commander Counseling. AR 600-110, para. 2-14.
  - a. Commanders formally counsel soldiers who test positive for the HIV antibody immediately after the post-diagnosis preventive medicine counseling. Commander counseling includes:
    - (1) A direct order to verbally advise all sexual partners of their infection prior to engaging in intimate sexual behavior or other behavior involving a significant risk of HIV transmission (such as behavior that would result in the exchange of blood or seminal fluid between persons);
    - (2) A direct order to use condoms when engaging in sexual relations (including, but not limited to, sexual intercourse, oral-genital, or anal-genital contact) with persons other than their spouse or with their spouse unless the spouse freely and knowingly consents to such relations after being informed of the soldier's infection (See also AR 600-110, para. 2-13b(9);
    - (3) A direct order not to donate blood, sperm, tissues, or other organs; and
    - (4) A direct order to inform all health care workers of their infection when seeking medical or dental treatment.
  - b. Commanders record counseling on DA Form 4856 (General Counseling Form) (see Appendix B, this outline). AR 600-110 includes a reproducible sample form. (**NOTE:** The form is not completely consistent with the 1994 update to AR 600-110. *Compare* DA Form 4856 *with* AR 600-110, para. 2-14c.

- c. Commanders maintain the counseling form in unit personnel files. Upon reassignment, commanders forward the form in a sealed envelope to the gaining commander. AR 600-110, paras. 2-14d and 2-17.
- d. Air Force Instruction includes a sample order for infected personnel to 1) inform sex partners prior to relations, 2) use transmission protection during sex (e.g. condom), 3) inform emergency care providers of HIV status, 4) inform medical providers of HIV status, and 5) not donate blood, sperm, tissue or organs. AFI 148-135, A14.
- e. Navy regulation does not provide for command counseling or a formal preventative HIV order.

D. Retention.

- 1. Repeal of 10 Feb 96 statute mandating immediate discharge of HIV-positive service members. Repeal of amendments to 10 U.S.C. § 1177 effective 24 Apr 96.
- 2. Current Policy.
  - a. Active duty personnel with evidence of HIV infection are referred for medical evaluation board to evaluate and document their fitness for continued service regardless of clinical staging. DODD 6485.1, para. 4.3 and E2.4.2
  - b. HIV positive service members are managed in the same manner as personnel with other progressive illnesses.
  - c. Soldiers meeting medical retention standards may reenlist, if otherwise eligible. AR 600-110, para. 4-5a.
  - d. Personnel showing no evidence of clinical illness (generally associated with WR-1 or WR-2 stages) or other indications of immunologic or neurologic impairment related to HIV infection are not separated solely on the basis of HIV positivity. DODD 6485.1, para. 4.3; AR 600-110, para. 1-14d.

- e. Reserve Component soldiers with serologic evidence of HIV infection have 120 days to complete a medical evaluation to determine their fitness for continued reserve service. Reservists found medically fit are permitted to serve in the Selected Reserves in a nondeployable billet, if available. AR 600-110, para. 5-17.

E. Assignment Limitations - Current Policy.

1. HIV-positive service members are not deployed overseas (defined as outside the 50 states, Puerto Rico, and the District of Columbia). DODD 6485.1, para. 6.16; AR 600-110, paras. 1-14e and 4-2a.
2. Soldiers confirmed HIV positive while stationed overseas are reassigned to the United States as soon as possible, regardless of PCS rules. AR 600-110, para. 4-7.
3. HIV-positive soldiers are NOT assigned to:
  - a. Any TOE or MTOE unit. AR 600-110, para. 4-2b. Installation commanders may reassign any HIV-infected soldier from such units to TDA units on their installation, provided the soldier has completed a normal tour. AR 600-110, para. 4-2b; or
  - b. USAREC, Cadet Command, or ARNG Full Time Recruiting Force if the soldier's medical condition requires frequent follow up and the unit is not near an Army MTF capable of providing such treatment. Commanders must report these soldiers to PERSCOM for assignment instructions. AR 600-110, para. 4-2b(3).
  - c. Military education programs resulting in additional service obligation. AR 600-110, para. 4-2b(2). This limitation does not apply to military schools required for career progression, such as an advanced course or CGSC. See also AR 600-110, para. 4-4.
4. Assignment preclusion from units, programs, organizations, or schools other than those listed in the regulation require HQDA (DAPE-HR) approval. AR 600-110, para. 4-2c.

5. Commanders may not change the assignment of an HIV-infected soldier unless required by this regulation or the soldier's medical condition. AR 600-110, para. 4-2d.
6. Commanders may not group HIV-infected soldiers into the same unit, duty area, or living area unless no other unrestricted units, positions, or accommodations are available. AR 600-110, para. 4-2d.
7. Commissioned officers in DOD sponsored professional education programs are disenrolled from the program at the end of the academic term in which the HIV infection is confirmed. Any additional service obligation incurred by participation in the program is waived. Financial assistance received is not subject to recoupment. AR 600-110, para. 4-2b(2).
8. Family members who are confirmed as HIV positive may accompany their sponsor overseas. The sponsor may request deletion from the overseas assignment based on compassionate reasons or may request an "all others" tour. If the initial diagnosis of a family member occurs while overseas, the sponsor may apply for a compassionate reassignment to the United States. Mandatory PCS of the sponsor will not occur based solely on the HIV positivity of the family member. AR 600-110, para. 4-3 and 6-12.
9. Comply with host nation requirements of HIV screening for DOD civilians. DODD 6485.1, para. 4.10

F. Separation.

1. "Individuals with serological evidence of HIV-1 infection who are fit for duty shall not be retired or separated solely on the basis of ...HIV-1 infection." DODD 6485.1, para.4.3
2. Regular and Reserve Component service members who are determined to be unfit for further duty due to progressive clinical illness or immunological deficiency due to HIV infection are processed for separation or retirement. DODD 6485.1, para. 4.5.

- a. Regular Army and Reserve Component commissioned and warrant probationary officers, who are confirmed HIV positive within 180 days of their original appointment or who report for initial entry training in an AD status (other than ADT) and are confirmed HIV positive within 180 days of reporting to AD, are processed for discharge under the provisions of AR 635-100, Chapter 5, section IX (Elimination of Probationary Officers). AR 600-110, para. 4-12d.
- b. Enlisted soldiers, confirmed HIV positive within 180 days of initial entry on AD, are separated for the convenience of the government for failure to meet procurement medical fitness standards under the provisions of AR 635-200, paragraph 5-11. See AR 600-110, para. 4-13b.
- c. HIV-positive military personnel who fail to comply with lawfully ordered preventive medicine procedures, including the commander's "safer sex" order, are subject to appropriate administrative and disciplinary actions, including separation. AR 600-110, paras. 4-12e, 4-13c, and 2-14c.
- d. HIV-positive military personnel may request separation from the service for the convenience of the government. AR 600-110, paras. 4-12a, b, and 4-13a, b.

G. Limited Use Policy.

- 1. DOD policy (DODD 6485.1, para. E3) prohibits the use of HIV testing information and information obtained during the EPI as an independent basis for adverse administrative or disciplinary action, except for:
  - a. Accession separations;
  - b. Voluntary separations;
  - c. Armed Service Blood Look Back activities;
  - d. Rebuttal or Impeachment purposes consistent with law or regulation;

- e. For administrative or disciplinary actions resulting from disobeying preventative medicine order; and
  - f. As an element of proof or aggravation in administrative or criminal action.
2. **Adverse personnel actions** include: court-martial; nonjudicial punishment; line of duty determination; involuntary separation action (other than for medical reasons); administrative or punitive reduction in grade; denial of promotion; a bar to reenlistment; as the basis for an unfavorable entry in a personnel record; as a basis to characterize service or to assign a separation program designator; or in any other action considered an adverse personnel action (e.g., OER or NCO-ER). DODD 6485.1, para. E3.2.1; AR 600-110, para. 7-3b.
3. The limited use policy does not apply to:
- a. The introduction of evidence for impeachment or rebuttal purposes in any proceeding in which the evidence of drug abuse or relevant sexual activity (or lack thereof) is first introduced by the soldier.
  - b. Disciplinary or other action based on independently derived evidence.
  - c. **Nonadverse personnel actions** include such as reassignment; disqualification (temporary or permanent) from a personnel reliability program; denial, suspension, or revocation of a security clearance; suspension or termination of access to classified information; and removal (temporary or permanent) from flight status or other duties requiring a high degree of stability or alertness such as explosive ordnance disposal (a medical evaluation board must determine whether removal from flight status or a similar position is necessary). DODD 6485.1, para. E3.2.3; AR 600-110, para. 4-6.
  - d. Any evidence or information derived from sources independent of the epidemiological assessment. AR 600-110, para. 7-4d.

#### H. Release of Information.

1. HIV data on a soldier is covered by the Privacy Act (5 U.S.C. § 552a).
2. Release is on an internal agency “need to know basis.” 5 U.S.C. 552a(b)(1).
3. The service regulations stress the need for extra precautions in protecting HIV records. See, e.g., AR 600-110, paras. 1-12g, 1-13f, 1-14n, and 1-14o(3).
  - a. All soldiers are individually and privately notified of all positive HIV test results in a face-to-face interview with a designated physician. AR 600-110, para. 2-12.
  - b. Unit commanders will accompany HIV-positive soldiers to the initial notification by medical personnel. Unit commanders will not remain for the EPI. AR 600-110, para. 1-13d.
  - c. MEDDAC/MEDCEN will notify commander if HIV-positive soldier requires change in profile status.
4. IAW AR 600-110, para. 2-12f, information concerning an individual’s HIV positivity is only released outside DOD in the following circumstances:
  - a. Military health care beneficiaries who are determined “at risk” (e.g., spouse of an HIV-positive soldier; See also AR 600-110, para. 6-9) are contacted directly by medical authorities and advised to seek medical evaluation;
  - b. Individuals who are not military health care beneficiaries, who are determined “at risk” (e.g., sexual partner of an unmarried HIV-positive soldier), are contacted through the local public health authorities, unless disclosure to the civilian health authorities is itself prohibited by the jurisdiction.
  - c. Release of information to local (including host nation) health authorities, concerning the identity of HIV-positive individuals, is done in accordance with the reporting requirements of the local jurisdiction.

5. Spouses of Reserve Component HIV-positive soldiers are notified and offered an opportunity for voluntary HIV testing and counseling. AR 600-110, para. 6-9b.

## **V. CONCLUSION.**



## APPENDIX A

### WALTER REED STAGING CLASSIFICATION SYSTEM

Stage	HIV Antibody	Chronic Lymphadenopathy	T Helper Cells/mm <sup>3</sup>	DHS	Thrush	O.I.
WR 0	-	-	>400	NI	-	-
WR 1	+	-	>400	NI	-	-
WR 2	+	+	>400	NI	-	-
WR 3	+	+ / -	<400	NI	-	-
WR 4	+	+ / -	<400	P	-	-
WR 5	+	+ / -	<400	P / C	+ / -	-
WR 6	+	+ / -	<400	P / C	+ / -	+



- indicates that this criterion is required for the given stage

#### Suffixes:

**K** - Kaposi's sarcoma, indicate presence by adding "K" (e.g., WR4K)

**B** - The suffix "B" should be added in the presence of constitutional symptoms (i.e., T > 100.5 for 3 weeks weight loss > 10% of body weight over 3 months, night sweats for 3 weeks, or chronic diarrhea for greater than 1 month).

**WR 0** - designates high risk contacts (sexual contacts, newborns, and recipients of blood products from patients documented to have AIDS [antibody + or virus isolation +])

**WR 5** - the occurrence of either complete anergy and/or thrush (i.e., DHS = P/Thrush + or C/Thrush - or C/Thrush +)

**HIV Antibody** - defined by the presence of antibody to the HIV as determined by the Western Blot technique (gp 41 is a requirement for diagnosis: "+" = present, "-" = absent)

**Chronic lymphadenopathy** - defined as two or more extralingual sites w/lymph nodes > 1 cm in diameter persistent for > 3 months ("+" = present, "-" = absent)

**T Helper Cells** - Quantitative depletion (<400 cells/cu.mm.) must be present for at least 3 months for WR 3 classification.

**DHS** - (Delayed Hypersensitivity) **NI** - normal DHS is defined as an intact cutaneous response to at least two of the following 4 test antigens: tetanus, trichophyton, mumps, and candida. P = 5 by 5 mm response to one of the above antigens. C - "complete" cutaneous anergy (no response to any antigen).

**Thrush** - Clinical oral candidiasis including + KOH prep.

**O.I.** - (Opportunistic infection): pneumocystis carinii pneumonia, CNS or disseminated toxoplasmosis, chronic cryptosporidiosis, candida esophagitis, disseminated histoplasmosis, CNS or disseminated cryptococcosis, disseminated atypical mycobacterium disease, extra-pulmonary tuberculosis, disseminated nocardiosis, disseminated CMV, or chronic mucocutaneous herpes simplex. Other disseminated or chronic non self-limited infections with agents in which CMI plays a pivotal role in host defense should be anticipated to cause opportunistic disease in patients with stages WR5 and WR6. Kaposi's sarcoma alone does not fulfill staging criteria for WR6.



## APPENDIX B

### GENERAL COUNSELING FORM

For use of this form, see AR 635-200; the proponent agency is MILPERCEN

#### DATA REQUIRED BY THE PRIVACY ACT OF 1974

AUTHORITY: 5 USC 301, 10 USC 3012 (G).

PRINCIPAL PURPOSE: To record counseling data pertaining to service members.

ROUTINE USES: Prerequisite counseling under paragraphs 5-8, 5-13, chapters 11, 13 or section III, chapter 14, AR 635-200. May also be used to document failures of rehabilitation efforts in administrative discharge proceedings.

DISCLOSURE: Disclosure is voluntary, but failure to provide the information may result in recording of a negative counseling session indicative of the subordinate's lack of a desire to solve his or her problems.

#### PART I - BASIC DATA

1. NAME Doe, John Q.	123-45-6789	3. GRADE E4	4. SEX Male
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5. UNIT  HHC, 1st Training Brigade	<i>FOR TRAINING UNITS ONLY</i>	
	6. WEEK OF TRAINING	7. TRAINING SCORES  HIGH ____ MED ____ LOW ____

#### PART II - OBSERVATIONS

##### 8. DATE AND CIRCUMSTANCES

The purpose of this command counseling is to inform you of DA and command policy regarding your responsibilities as a result of testing positive for the Human Immunodeficiency Virus (HIV) antibody. This counseling supplements and complements the preventive medicine counseling you received on 20 Dec 87.

##### 9. DATE AND SUMMARY OF COUNSELING

I have been advised that you were counseled by Preventive Medicine personnel concerning your diagnosis of HIV positivity, the risk this condition poses to your health, as well as the risk you pose to others. You were advised by medical personnel as to necessary precautions you should take to minimize the health risk to others as a result of your condition. While I have great concern for your situation and needs, in my capacity as a commander, I must also be concerned with, and ensure the health, welfare, and morale of the other soldiers in my command. Therefore, I am imposing the following restrictions:

- You will verbally advise all prospective sexual partners of your diagnosed condition prior to engaging in any sexual intercourse. You are also ordered to use condoms should you engage in sexual intercourse with a partner.
- You will not donate blood, sperm, tissues, or other organs since this virus can be transmitted via blood and body fluids.
- You will notify all health care workers of your diagnosed condition if you seek medical or dental treatment, or accident requires treatment. If you do not understand any element of this order, you will address all questions to me. Failure on your part to adhere to your preventive medicine counseling or the counseling I have just given you will subject you to administrative separation and/or punishment under the UCMJ, as I see fit.

#### DISPOSITION INSTRUCTIONS

*This form will be destroyed upon : reassignment (other than rehabilitative transfers), separation at ETS, or upon retirement*

